

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Rachel Adler	Team: Squad #01	CCRB Case #: 202103385	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Sunday, 05/30/2021 12:12 AM, Sunday, 05/30/2021 12:30 AM	Location of Incident: In front of 76-13 Broadway and in front of 41-27 77th Street	18 Mo. SOL 11/30/2022	Precinct: 110		
Date/Time CV Reported Sun, 05/30/2021 4:12 AM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Fri, 06/04/2021 10:38 AM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Brandon Rivera	17431	965457	110 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM William Veintimilla	05368	963581	110 PCT
2. POM David Calhoun	30063	963427	110 PCT
3. SGT Francisco Luciano	04878	936988	110 PCT
4. CPT Ramnauth Ramlochan	00000	939275	110 PCT
5. PO Jonathan Freda	00436	963525	110 PCT
6. PO Sean Foley	01960	965104	110 PCT
7. PO Omar Alli	09317	968223	110 PCT
8. PO Emmanuel Hatzinikolaou	27442	969110	110 PCT
9. PO Joseph Peters	05558	964702	110 PCT
10. PO John Villalba	24738	935932	110 PCT
11. PO James Cruz	17637	967833	110 PCT
12. PO James Droge	00190	951695	110 PCT
13. SGT Rhett Barrett	02428	938029	110 PCT
14. PO Craig Defreitas	17711	938338	110 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Brandon Rivera	Abuse: In front of 76-13 Broadway in Queens, Police Officer Brandon Rivera failed to explain to § 87(2)(b) the reason for a law enforcement activity.	
B.POM Brandon Rivera	Force: In front of 41-27 77th Street in Queens, Police Officer Brandon Rivera used a taser against § 87(2)(b)	
C.POM Brandon Rivera	Discourtesy: In front of 41-27 77th Street in Queens, Police Officer Brandon Rivera spoke discourteously to § 87(2)(b)	
D.POM Brandon Rivera	Force: In front of 41-27 77th Street in Queens, Police Officer Brandon Rivera struck § 87(2)(b) with a radio.	

Officer(s)	Allegation	Investigator Recommendation
E.POM Brandon Rivera	Force: In front of 41-27 77th Street in Queens, Police Officer Brandon Rivera struck § 87(2)(b) with a radio.	
F.POM Brandon Rivera	Force: In front of 41-27 77th Street in Queens, Police Officer Brandon Rivera used a taser against § 87(2)(b)	
G.POM Brandon Rivera	Discourtesy: In front of 41-27 77th Street in Queens, Police Officer Brandon Rivera spoke discourteously to § 87(2)(b)	

Case Summary

On May 30, 2021, § 87(2)(b) filed this complaint over the phone with IAB on his own behalf, generating original log § 87(2)(b). The CCRB received the complaint on June 4, 2021.

On May 30, 2021, at 12:12 A.M., in front of 76-13 Broadway in Queens, PO Brandon Rivera of the 110th Precinct failed to provide § 87(2)(b) with the reason for a vehicle stop (**Allegation A, Abuse of Authority:** § 87(2)(g)). In front of 41-27 77th Street in Queens, PO Rivera used his taser against § 87(2)(b) (**Allegation B, Force:** § 87(2)(g)) and told him, “Don’t fucking move,” (**Allegation C, Discourtesy:** § 87(2)(g)). PO Rivera then struck § 87(2)(b) with a radio twice (**Allegation D, Force:** § 87(2)(g)) and **Allegation E, Force:** § 87(2)(g)) and again used his taser against § 87(2)(b) (**Allegation F, Force:** § 87(2)(g)). PO Rivera told § 87(2)(b) “Shut the fuck up. Nobody told you to run, you fucking idiot. Fuck you,” and “Shut the fuck up,” (**Allegation G, Discourtesy:** § 87(2)(g)). § 87(2)(b) was arrested and charged with possession of a forged instrument, criminal possession of a weapon (brass knuckles), resisting arrest, obstructing governmental administration, criminal possession of a controlled substance, disorderly conduct, operating a motor vehicle without insurance, and a license plate violation (**01 Board Review**).

The investigation obtained body-worn camera (BWC) footage from PO Rivera, and the following officers, all assigned to the 110th Precinct: PO David Calhoun, PO William Veintimilla, PO Omar Alli, PO James Cruz, PO James Droge, PO Sean Foley, PO Jonathan Freda, and PO Emmanuel Hatzinikolaou (**05-14 Board Review**).

Findings and Recommendations

Allegation (A) Abuse of Authority: In front of 76-13 Broadway in Queens, Police Officer Brandon Rivera failed to explain to § 87(2)(b) the reason for a law enforcement activity.

The following facts are undisputed: § 87(2)(b) was driving a red Ford F-150 pick-up truck with temporary New Jersey plates in the vicinity of 76-13 Broadway in Queens, with § 87(2)(b) and § 87(2)(b) as his passengers. PO Rivera stopped § 87(2)(b) vehicle while driving an unmarked vehicle in which PO Calhoun and PO Veintimilla were passengers. § 87(2)(b) pulled over immediately, after which PO Rivera approached the driver’s window. PO Freda and PO Foley, who were assigned to a different unmarked vehicle, were also present.

§ 87(2)(b) testified that at the beginning of the vehicle stop, he asked PO Rivera why he had been pulled over (**15 Board Review**). PO Rivera did not answer the question but only asked for § 87(2)(b) license and registration.

PO Rivera testified that he pulled § 87(2)(b) over because his vehicle’s temporary license plate expiration date was entirely covered by a black plate cover in violation of the vehicle and traffic law (**16 Board Review**). When he approached § 87(2)(b) driver’s side window, PO Rivera told § 87(2)(b) that the reason for the vehicle stop was the obstructed plate.

At 01:15 in PO Rivera’s first BWC, soon after PO Rivera approaches § 87(2)(b) vehicle, § 87(2)(b) asks why he was stopped (**05 Board Review**). PO Rivera states, “Your plate cover [...] on the license plate is covering the expiration date.”

§ 87(2)(g) BWC footage shows PO Rivera telling § 87(2)(b) the reason for the vehicle stop, § 87(2)(b)

Allegation (B) Force: In front of 41-27 77th Street in Queens, Police Officer Brandon Rivera used a taser against § 87(2)(b)

Allegation (C) Discourtesy: In front of 41-27 77th Street in Queens, Police Officer Brandon Rivera spoke discourteously to § 87(2)(b)

Allegation (D) Force: In front of 41-27 77th Street in Queens, Police Officer Brandon Rivera struck § 87(2)(b) with a radio.

Allegation (E) Force: In front of 41-27 77th Street in Queens, Police Officer Brandon Rivera struck § 87(2)(b) with a radio.

Allegation (F) Force: In front of 41-27 77th Street in Queens, Police Officer Brandon Rivera used a taser against § 87(2)(b)

Allegation (G) Discourtesy: In front of 41-27 77th Street in Queens, Police Officer Brandon Rivera spoke discourteously to § 87(2)(b)

It is undisputed that after PO Rivera asked § 87(2)(b) to exit the vehicle, which he did. PO Rivera then told § 87(2)(b) he was under arrest and asked him to turn around, after which § 87(2)(b) fled on foot. PO Rivera, PO Veintimilla, and PO Calhoun chased § 87(2)(b) on foot. While running, PO Rivera used his taser against § 87(2)(b) after which § 87(2)(b) fell to the ground in front of 41-27 77th Street. PO Rivera then issued two or three hand strikes against § 87(2)(b) at least once striking the top of his head with the butt of his radio, causing a laceration. PO Rivera then used his taser against § 87(2)(b) again. PO Veintimilla and PO Calhoun handcuffed § 87(2)(b) after which they stood him up and brought him back to the police vehicle.

Discourtesy Allegations C and G, as well as force Allegation F are based on additional misconduct that took place during this incident that was captured on BWC footage.

§ 87(2)(b) testified that after he ran for approximately half a block, he felt the quick shock of a taser in the middle of his lower back (**15 Board Review**). He did not hear any officer issue warnings that they would use a taser prior to this. The shock of being tased caused § 87(2)(b) to trip and he fell face forward onto the ground with his arms and face hitting the ground. He was not injured from the fall. The officers were right behind him, caught up to him when he fell, and held him down. While § 87(2)(b) was face down on the ground, PO Rivera punched the top of his head two or three times. These punches “cracked open” § 87(2)(b) head in such a way that he would later need stitches. § 87(2)(b) was not doing anything at the time of the punches other than lying on the ground. He was not resisting and was already in handcuffs. The officers were saying something, but § 87(2)(b) could not recall what. After the punches, § 87(2)(b) screamed and asked why the officers punched him in the head. When officers pulled § 87(2)(b) up into a standing position, he felt blood dripping from the top of the head. § 87(2)(b) did not provide a signed HIPAA form to the investigation.

The investigation was unsuccessful in contacting § 87(2)(b) and § 87(2)(b) (**17 Board Review**).

At 14:55 in PO Rivera’s first BWC, while standing at the back of § 87(2)(b) vehicle, PO Veintimilla tells PO Rivera that § 87(2)(b) has a DUI and a gun charge (**05 Board Review**). At 17:47, PO Rivera is chasing § 87(2)(b) and, while holding his radio to his face with his left hand, states, “110 Public Safety.” At 17:52, while § 87(2)(b) is approximately 20 feet ahead of PO Rivera, a taser is visible on the left side of the screen and the sound of a taser activating is audible. § 87(2)(b) then falls forward and PO Rivera catches up to him. At 17:56, PO Rivera, still holding his taser in his left hand, approaches § 87(2)(b) who is standing with one hand up in the air, and one hand toward the ground. While continuing to move toward § 87(2)(b) PO Rivera states, “Don’t fucking move.” At 17:58, PO Rivera’s right hand is holding his radio as he lifts his right arm up and strikes at § 87(2)(b). At 18:00, PO Veintimilla is visible on the right side of the screen, as

the sound of a taser is audible. § 87(2)(b) is on the ground but it unclear if he is moving. PO Veintimilla states, “Give me your arms.” At 18:11, PO Veintimilla handcuffs § 87(2)(b) who is face down on the ground while PO Calhoun holds his legs bent upward at the knees with his ankles crossed. PO Calhoun states, “We’re good, we’re good.” § 87(2)(b) states, “Why’d you fucking punch me in the head, bro?” PO Rivera states, “Shut the fuck up. Nobody told you to run, you fucking idiot. Fuck you.” At 18:28, PO Calhoun and PO Veintimilla stand § 87(2)(b) up and take a few steps in the direction of the police vehicle. § 87(2)(b) states, “Pick up my phone, man.” PO Rivera states, “Shut the fuck up.”

At 17:50 in PO Veintimilla’s BWC, PO Veintimilla is running behind PO Rivera and § 87(2)(b) when § 87(2)(b) falls to the ground (**08 Board Review**). § 87(2)(b) begins to stand up as PO Rivera approaches him from behind and then falls again as PO Rivera gets closer. § 87(2)(b) is moving forward and falling to the ground when PO Rivera, who is standing behind and over him, lifts his right hand, still holding his radio, and strikes § 87(2)(b). It is unclear where this strike lands. PO Rivera then strikes § 87(2)(b) again with his right hand, which is still holding the radio. As this occurs, PO Rivera is crouched or sitting over § 87(2)(b) waist or legs with § 87(2)(b) entire back exposed and turned sideways in front of him. § 87(2)(b) body and head are flat against the ground at the time and he is not moving upward. PO Calhoun’s flashlight is illuminating the area at the time. During the second blow, PO Rivera’s radio strikes § 87(2)(b) head. PO Rivera then raises his right hand a third time as PO Veintimilla grabs hold of § 87(2)(b) back. It is unclear where or if this strike lands. At 17:56, PO Veintimilla grabs hold of § 87(2)(b) left arm while stating, “Give me your arms.” § 87(2)(b) legs are moving back and forth along the ground. At 17:59, PO Rivera holds a taser to § 87(2)(b) leg and the sound of a taser activating is audible. PO Veintimilla grabs hold of § 87(2)(b) right hand, which is not yet handcuffed, and moves out of his grasp. At 18:00, PO Calhoun holds § 87(2)(b) legs crossed and upward towards his back and states, “We’re good, we’re good.” PO Rivera then moves the taser away from § 87(2)(b) body. A screenshot taken from 17:53 in PO Veintimilla’s BWC shows PO Rivera’s radio hitting § 87(2)(b) head (**35 Board Review**) and frame advance photos show the entirety of the radio strikes (**36 Board Review**).

At 17:52 in PO Calhoun’s BWC, PO Calhoun approaches from the right as PO Rivera is pointing his taser at § 87(2)(b) who is on the ground (**07 Board Review**). As § 87(2)(b) begins to stand, PO Rivera moves towards him and issues a hand strike while § 87(2)(b) falls back to the ground. It is not clear from the footage where the strike lands.

PO Rivera and PO Veintimilla both testified that PO Rivera decided to place § 87(2)(b) under arrest after New Jersey State Troopers told him over the phone that the temporary license plate number belonged to a different vehicle (**16, 19 Board Review**). Prior to PO Rivera asking § 87(2)(b) to exit his vehicle, an ID check on § 87(2)(b) revealed he was previously arrested on firearm charges.

PO Rivera testified that while he was chasing § 87(2)(b) he did not know if any other officers were behind him (**16 Board Review**). § 87(2)(b) ran very quickly, and PO Rivera did not think he was going to catch him. He therefore unholstered his radio with his left hand and, while running, transmitted, “110 Public Safety,” over the radio to let officers know he needed assistance. PO Rivera then began gaining on § 87(2)(b). Since it was impossible to re-holster his radio while running, PO Rivera moved it from his left to right hand and unholstered his taser from his left hip with his left hand. While § 87(2)(b) was approximately 20 to 25 feet ahead of him, PO Rivera deployed his taser, aiming at his lower back. PO Rivera did not know if the taser prongs connected at the time; he later learned that neither prong broke skin although one hit § 87(2)(b) clothing. When PO Rivera deployed the taser, § 87(2)(b) fell forward. PO Rivera continued running toward § 87(2)(b).

with his radio in his right hand and his taser in his left hand. § 87(2)(b) pushed himself up off the ground with his hands and attempted to flee again. PO Rivera then jumped on top of him, after which § 87(2)(b) was on his stomach, facing the same direction as PO Rivera, and still actively resisting by kicking his feet and flailing his arms. PO Rivera is right-hand dominant and still had his radio in his right hand at the time. Since § 87(2)(b) was still actively resisting, PO Rivera issued hand strikes with his right hand, aiming toward § 87(2)(b) back. He did not recall how many hand strikes he issued but believed it may have been two or three. After watching PO Veintimilla's BWC from 17:45 to 17:53, PO Rivera acknowledged that when he issued the second hand strike, the butt of his radio hit § 87(2)(b) head. This was unintentional, due to the high-intensity moment, and the fact that things were happening very quickly. § 87(2)(b) sustained a laceration to his head from the hand strikes; PO Rivera did not recall how deep or long the laceration was. After PO Rivera issued the hand strikes, PO Veintimilla and PO Calhoun moved toward § 87(2)(b) and grabbed onto him, causing PO Rivera to fall off. § 87(2)(b) who was still on his stomach, continued to resist by flailing his arms and kicking his legs while PO Veintimilla attempted to handcuff him. For this reason, PO Rivera pressed his taser against § 87(2)(b) legs and activated it in an attempt to complete the earlier taser circuit. However, since the taser had not broken skin earlier, this did not work. Shortly thereafter, PO Veintimilla and PO Calhoun were able to handcuff § 87(2)(b) after which officers stood him up. PO Rivera acknowledged using discourteous language while speaking to § 87(2)(b) but did not independently recall what he said. After watching his own BWC from 17:52 to 18:14, PO Rivera acknowledged telling § 87(2)(b) "Don't fucking move," to gain voluntary compliance using his command voice. PO Rivera also acknowledged telling § 87(2)(b) while he was in handcuffs, "Shut the fuck up. Nobody told you to run, you fucking idiot." He said this because it was a high-intensity moment and for no other reason. After watching the same video from 18:25 to 18:33, PO Rivera acknowledged telling § 87(2)(b) "Shut the fuck up," while § 87(2)(b) was standing and in handcuffs. He said this because it was a high-intensity moment and in response to § 87(2)(b) telling officers to pick up his phone from the ground. There was no other reason for the language.

PO Veintimilla testified that he was standing at the back of § 87(2)(b) vehicle with § 87(2)(b) and § 87(2)(b) when he saw PO Rivera pursuing § 87(2)(b) on foot (**19 Board Review**). PO Veintimilla ran behind PO Rivera and PO Calhoun followed him. PO Veintimilla was running more quickly than PO Rivera and gaining on him. As he got closer to PO Rivera, PO Veintimilla saw § 87(2)(b) trip over his feet and tumble to the ground onto his stomach. At the time, PO Veintimilla did not realize PO Rivera had deployed his taser, but he later learned that he had shot and missed, startling § 87(2)(b) and causing him to tumble. PO Rivera then tripped over § 87(2)(b) while holding his taser in his left hand and his radio in his right hand. PO Veintimilla did not notice PO Rivera using control strikes against § 87(2)(b) at the time, but also later learned that he did so with his right hand, which was holding his radio. PO Veintimilla did not know where PO Rivera hit § 87(2)(b) or if the radio hit § 87(2)(b) head. PO Veintimilla also later learned that PO Rivera deployed his taser a second time at § 87(2)(b) although he did not realize it at the time. Soon after § 87(2)(b) and PO Rivera fell to the ground, PO Veintimilla caught up and squatted beside § 87(2)(b). Once § 87(2)(b) was on the ground, he was no longer resisting. Approximately two seconds after § 87(2)(b) fell, PO Veintimilla easily handcuffed § 87(2)(b) who was not doing anything with his body and was not locking his arms. He then rolled § 87(2)(b) over and picked him up. After watching his BWC from 17:54 to 18:08, PO Veintimilla noted that during the handcuffing process, he stated, "Give me your hands," which may have meant that § 87(2)(b) was resisting somewhat.

Arrest report § 87(2)(b) completed by arresting officer PO Rivera, states that § 87(2)(b) was arrested at 12:36 A.M. in front of 76-13 Broadway for possession of a forged instrument in the third degree, criminal possession of a weapon in the third degree, resisting arrest, obstructing governmental administration in the second degree, criminal possession of a controlled substance in the 7th degree,

disorderly conduct, operating a motor vehicle without insurance, and a license plate violation (**01 Board Review**). Arrest report § 87(2)(b) completed by arresting officer Sgt. Marco Martinez, states that § 87(2)(b) was arrested at the Queens County Criminal Court at 11:15 A.M. as a fugitive from justice on an out-of-state warrant (**02 Board Review**).

Threat Resistance Injury form § 87(2)(b) completed by PO Freda states that PO Rivera deployed his taser but the dart connected with § 87(2)(b) jacket and did not break skin (**21 Board Review**). When PO Rivera instructed § 87(2)(b) to turn around, he “actively resisted.” With “both hands occupied, a taser in the left hand and his radio in the right, [PO Rivera] attempted to control and rear cuff subject and did accidentally strike § 87(2)(b) in the head with radio causing a minor laceration.” Then, while § 87(2)(b) was still actively resisting, PO Rivera attempted to “complete the circuit by placing taser on subject’s left leg with cartridge still attached but was unsuccessful.” The first photo attachment shows a laceration on the top left side of § 87(2)(b) head and dried streaks of blood along the left side of his face. The second photo attachment shows the laceration up close. In this photo, the laceration is still bleeding. There is no ruler or other gauge to determine, from the photograph, the length or depth of the laceration.

According to *DAO-DCT Disciplinary Case No. 2013-10851*, a strike to the head with an asp constituted deadly physical force (**37 Board Review**).

According to NYPD Patrol Guide Procedure 221-01, the primary duty of all officers is “to protect human life, including the lives of individuals being placed in police custody,” (**22 Board Review**). Officers may use force “when it is reasonable to ensure the safety of a member of service or a third person, or otherwise protect life, or when it is reasonable to place a person into custody or to prevent escape from custody. In all circumstances, any application or use of force must be reasonable under the circumstances. [...] The use of deadly physical force against a person can only be used to protect MOS and/or the public from imminent serious physical injury or death.” To determine if the use of force is reasonable, officers should consider: “a. The nature and severity of the crime/circumstances; b. Actions taken by the subject; c. Duration of the action; d. Immediacy of the perceived threat or harm to the subject, members of the service, and/or bystanders; e. Whether the subject is actively resisting custody; f. Whether the subject is attempting to evade arrest by flight; g. Number of subjects in comparison to the number of MOS; h. Size, age, and condition of the subject in comparison to the MOS; i. Subject’s violent history, if known; j. Presence of hostile crowd or agitators; k. Subject apparently under the influence of a stimulant/narcotic which would affect pain tolerance or increase the likelihood of violence.”

According to NYPD Patrol Guide Procedure 221-02, active resisting is defined as “physically evasive movements to defeat a member of the service’s attempt at control, including bracing, tensing, pushing, or verbally signaling an intention to avoid or prevent being taken into or retained in custody,” (**23 Board Review**). When a person “intentionally prevents or attempts to prevent a police officer” [...] from effecting an authorized arrest of himself or another person,” they are guilty of resisting arrest.

NYPD Patrol Guide Procedure 221-08 states that a conducted electrical weapon, or a taser, as a “less lethal device [...] is intended to augment and provide a greater margin of safety for MOS who might otherwise be forced to physically subdue a dangerous subject,” (**24 Board Review**). Tasers should be used only “against persons who are actively resisting, exhibiting active aggression, or to prevent individuals from physically injuring themselves or other person(s) actually present.” When using a taser, officers should issue a verbal warning if consistent with personal safety and when feasible. Officers must consider the “totality of circumstances when deciding the reasonable amount of force necessary to overcome resistance when effecting an arrest.” Among others, such factors include: a.

The nature and severity of the crime/circumstances; b. Actions taken by subject; c. Duration of action; d. Immediacy of perceived threat or harm to subject, members of the service, and/or bystanders; e. Whether the subject is actively resisting custody; f. Whether the subject is attempting to evade arrest by flight; g. Number of subjects in comparison to number of MOS; h. Size, age, and condition of subject in comparison to MOS; and i. Subject's violent history, if known." Tasers should only be used against subjects who are actively resisting, exhibiting active aggression, or to prevent individuals from physically injuring themselves or other person(s) actually present. "Fleeing should not be the sole justification for using a CEW against a subject. Members should consider the severity of the offense, subject's threat level to others, and the risk of injury to the subject before deciding to use a CEW on a fleeing subject. [...] All applications must be independently justifiable, and the risks should be weighed against other force options."

NYPD Patrol Guide Procedure 200-02 requires that officers render "services with courtesy and civility" (**25 Board Review**). *DAO-DCT Disciplinary Case No. 2017-17276* ruled that "language which would ordinarily be inappropriate in dealing with civilians may be excused in the course of a violent confrontation" (**26 Board Review**). *DAO-DCT Disciplinary Case No. 2015-15012* found an officer guilty when making a discourteous statement in response to someone who was under arrest and had asked for his phone, finding that the statement "served no legitimate purpose but to belittle [the arrestee's] requests for the return of his property," (**34 Board Review**).

BWC footage showed that the first time PO Rivera deployed his taser, he was alone and chasing § 87(2)(b) who was actively fleeing custody. At the time, PO Rivera knew § 87(2)(b) to have a previous firearm arrest § 87(2)(g)

§ 87(2)(g)

During the second taser activation, although three officers were present, § 87(2)(b) had previously attempted to stand and run again and was still actively resisting by using his arms and legs while PO Veintimilla and PO Calhoun attempted to handcuff him. The first taser activation was ineffective and § 87(2)(b) still presented a potential threat to officers and other civilians as someone who had a prior firearm charge. Finally, since § 87(2)(b) was also on a flat, non-elevated surface, the risk of injury was minimal. § 87(2)(g)

BWC footage showed that PO Rivera told § 87(2)(b) "Don't fucking move," while he was chasing § 87(2)(b) who was actively fleeing and not yet in custody. Although the interaction was not violent per se, it was a tense physical interaction § 87(2)(g)

the fact that § 87(2)(b) had already fled and had previously been arrested on firearm charges. § 87(2)(g)

In contrast to this initial discourtesy, PO Rivera made the other discourteous remarks while § 87(2)(b) was already handcuffed and then while he was walking back to the police vehicle. Although PO Rivera testified that he made these statements due to the high-intensity moment, BWC footage shows that § 87(2)(b) was compliant at the times of the statements, there was no ongoing violent interaction, and the statements served no legitimate purpose but to belittle § 87(2)(b) § 87(2)(g)

BWC shows that PO Rivera's hands were full the first time he hit § 87(2)(b) with the radio in his

hands. Given this and due to the fast-moving situation, the investigation credits PO Rivera's statement that he did not have time or opportunity to re-holster his equipment. It is unclear from BWC where this blow landed. However, even if the blow landed on § 87(2)(b) head, the investigation credits PO Rivera's testimony that this was an accident due to the fast-moving circumstances, the fact that it was dark outside, and the fact that § 87(2)(b) head and upper body were in motion as he attempted to stand. As such, the question is whether PO Rivera was justified in using a hand strike on § 87(2)(b) back with a radio in his hand at the time. § 87(2)(g) § 87(2)(b) was "actively resisting custody" by standing up in an attempt to continue to "evade arrest by flight," that PO Rivera was the only officer present, that PO Rivera knew § 87(2)(b) had a prior firearm arrest § 87(2)(g), and that the prior taser use was not effective in subduing § 87(2)(b) § 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

BWC footage shows that the second time PO Rivera hit § 87(2)(b) with the radio in his hand, the blow landed on his head. Per *DAO-DCT Disciplinary Case No. 2013-10851*, hitting a person's head with a blunt object constitutes deadly force. As such, PO Rivera would only have been permitted to do this intentionally if he needed to "protect MOS and/or the public from imminent serious physical injury or death," per *Patrol Guide Procedure 221-01*. PO Rivera acknowledged that his radio hit § 87(2)(b) head and caused a laceration during this second strike but stated that it was accidental and that he was aiming for § 87(2)(b) back. However, BWC footage shows that at the time of the second strike, § 87(2)(b) was beneath PO Rivera with his head to the ground and his back completely exposed and within PO Rivera's striking range. Further, it shows that § 87(2)(b) was no longer attempting to stand or move away at the time, that two additional officers had arrived, and that the area was lit up by PO Calhoun's flashlight. With this increased visibility, BWC footage shows PO Rivera's hand moving not toward the large expanse of § 87(2)(b) back but rather upward toward his head and neck. While the incident was moving quickly, as PO Rivera testified, his discourteous statements made moments later support the idea that this blow to the head was deliberate. That is, in response to § 87(2)(b) asking why PO Rivera punched him in the head, PO Rivera stated, "Shut the fuck up. Nobody told you to run, you fucking idiot. Fuck you." These statements and this reference to § 87(2)(b) prior flight in response to the question about why PO Rivera hit him in the head even after the violent interaction had ended show that PO Rivera was acting in a potentially retaliatory manner toward § 87(2)(b) § 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

Civilian and Officer CCRB Histories

- This is the first CCRB complaint to which § 87(2)(b) has been a party (27 Board Review).
 - PO Rivera has been a member of service for four years and has been a subject in three additional cases and 10 additional allegations, none of which have been substantiated. § 87(2)(g)
- § 87(2)(g)

Mediation, Civil, and Criminal Histories

- This complaint was not suitable for mediation.
- As of July 6, 2022, the New York City Office of the Comptroller has no record of a Notice

of Claim being filed in regard to this incident **(30 Board Review)**.

- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Squad: 1

Investigator:	<u>Rachel Adler</u>	<u>Investigator Rachel Adler</u>	<u>8/2/2022</u>
	Signature	Print Title & Name	Date

Squad Leader:	<u>Mgr. Joy Almeyda</u>		<u>8.2.22</u>
	Signature	Print Title & Name	Date

Reviewer:			
	Signature	Print Title & Name	Date